

1 Gregg McLean Adam, No. 203436
Jonathan Yank, No. 215495
2 Gonzalo C. Martinez, No. 231724
Jennifer S. Stoughton, No. 238309
3 **CARROLL, BURDICK & McDONOUGH LLP**
Attorneys at Law
4 44 Montgomery Street, Suite 400
San Francisco, CA 94104
5 Telephone: 415.989.5900
Facsimile: 415.989.0932
6 Email: gadam@cbmlaw.com
jyank@cbmlaw.com
7 gmartinez@cbmlaw.com
jstoughton@cbmlaw.com

8 Attorneys for Plaintiff
9 San Jose Police Officers' Association

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA

12
13 SAN JOSE POLICE OFFICERS'
ASSOCIATION,

14 Plaintiff,

15 v.

16 CITY OF SAN JOSE, BOARD OF
17 ADMINISTRATION FOR POLICE AND
FIRE DEPARTMENT RETIREMENT
18 PLAN OF CITY OF SAN JOSE, and
DOES 1-10, inclusive,

19 Defendants.
20

ENDORSED FILED

2012 JUN -6 AM 8: 56

David H. Yarnasaki, Clerk of the Superior Court
County of Santa Clara, California

By: S. VERA Deputy Clerk

112CV225926-3
No.

DECLARATION OF IAN COOLEY IN
SUPPORT OF SJPOA'S *EX PARTE*
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE REGARDING
PRELIMINARY INJUNCTION

BY FAX

21 I, Ian Cooley, declare and say:

22 1. I am employed by the City of San Jose as a Police Officer and a member
23 of the SAN JOSE POLICE OFFICERS' ASSOCIATION ("SJPOA"). I have worked as a
24 Police Officer for the City of San Jose since 1997. Before that, I worked as a Deputy
25 Sheriff for the City and County of San Francisco from 1994-1997. As a result of my
26 employment with the City of San Jose, I am familiar with the facts in this matter, as well
27 as those set forth in this Declaration. If called upon as a witness, I could and would testify
28 competently to these facts.

2. I submit this declaration in support of the SJPOA's *Ex Parte* Application for Temporary Restraining Order and Order to Show Cause Regarding Preliminary Injunction ("*Ex Parte* Application for TRO").

3. In July 2011, San Jose Police Officers agreed to a 10% pay cut that will be in effect until at least June 2013. This pay cut is in addition to increases to employee contributions for retirement benefits (including increases to employee-paid retirement and retiree health care costs) that amount to an approximate additional 17% decrease to my take-home pay

4. I am informed that this voluntary pay cut, combined with increases to the employee-paid retirement/retiree health care costs in recent years, have made San Jose's police officers among the lowest paid police in the region taking into account total compensation. We currently pay more into our retirement than any other police agency in the region. Effective June 24, 2012, we are slated for an additional approximate 2% decrease to take home pay which will put us even farther behind other law enforcement agencies in the region.

5. The cumulative impact of the pay reduction along with the increases to employee-paid retirement/retiree health care costs has forced many officers to take positions with other police agencies in the region. I know several officers who have already left the department and many more who are considering leaving should additional decreases to pay and/or pension benefits occur.

6. I have a family with children, and I am the sole financial provider for my elderly mother with serious health problems.

7. The prior pay reduction and increases to employee-paid retirement/retiree health care costs have forced me to cut back on all non-essential spending in order to have enough money each month to pay my family's living expenses. We were forced to sell one of our cars, stopped cable service and are living on a very strict budget. In order to pay my required bills and basic living expenses, I have been unable to save any money for emergencies.

8. Measure B, if implemented, would require that I and other San Jose police officers begin paying 50% of the costs of retiree healthcare, including both the normal cost and unfunded liability. Currently, the unfunded liability percentage is 32% which means that my salary immediately will be decreased by at least another 9% for the unfunded retiree health care costs (because we already paying 7% of the unfunded retiree health care costs) although I will receive the same level of benefits from the City. If this occurs, it will have a devastating impact on my ability to provide for my family and my elderly mother.

9. I have also been informed that the City will start charging me for 50% of the unfunded pension liability (also currently set at 32%) although the implementation of the unfunded pension liability charges will be phased in over time. The implementation of this additional decrease will make my financial situation even more precarious.

10. Measure B will also modify disability retirement for San Jose police officers, as detailed below, such that it will no longer be of any benefit to me. I consider comprehensive disability retirement protection an absolutely crucial employment benefit for my line of work because police work is extremely physically demanding and dangerous. I personally have been injured on the job and am very aware of the risks posed by our day to day responsibilities. I would not have chosen a career in law enforcement without the knowledge that I would be protected with full retirement benefits in the event that I am disabled as a result of actions taken in the line of duty while performing my job protecting the citizens of San Jose.

11. Under the City of San Jose's current disability retirement plan for police officers, I would be deemed disabled if I am no longer able to perform duties within my peace officer classification (i.e. the normal duties of a police officer). Under the current system, if I was rendered disabled, I would be entitled to retirement disability payments of 50% of my current salary for the first 20 years of service and an additional 4% for every year of service thereafter. The City explained these rights to me many times throughout

my career, starting in the Police Academy, and I have counted on these rights throughout my career to protect my family's financial security should I be injured in the line of duty.

12. Measure B, if passed by San Jose electorate, would eviscerate the police disability retirement plan. My understanding is that instead of analyzing whether I will be able to perform police officer functions, the City will analyze whether I can perform the essential job functions of any position within the Police Department, including jobs that consist primarily of administrative tasks. If I am found to be physically able to perform the essential job functions of any position within the Police Department, my disability application will be denied. More troubling, if the job or jobs that I have been found to be able to perform are occupied, I will be terminated from city employment without any retirement benefits. The non-police jobs in the department are Alarm Technician (1 positions), Crime Prevention Specialist (5 positions), Latent Fingerprint Examiner (5 positions), and Police Artist (1 position). I do not recall when any of these positions was vacant for any significant period of time.

13. If the changes delineated in the prior paragraph are implemented, it will have an immediate and catastrophic impact on me if I become disabled as a result of actions taken in the line of duty, as it almost certainly eliminates the availability of any retirement pension. Essentially, the changes have all but guaranteed that I will be terminated and left without the means to support myself and my family as a result of being injured in the line of duty.

14. In light of the risk of losing my right to disability retirement as well as the decrease in take home pay if Measure B passes, I have already secured employment with the San Francisco Police Department ("SFPD"). Top step salary for the SFPD is 20,000 dollars more than the San Jose Police Department, the employee-paid retirement/retiree health care costs are significantly lower and the SFPD offers better differentials and premium pay. Thus, the total take home pay is significantly higher. Moreover, SFPD maintains full disability retirement rights. I have already passed on one lateral police academy class with the SFPD, but if Measure B passes, I will have no choice

1 but to participate in the August 20, 2012 lateral class and terminate my employment with
2 San Jose.

3 15. I am informed that many of my colleagues also have begun looking for
4 law enforcement work at departments that maintain full disability retirement coverage,
5 rather than risk being hung out to dry during such a time of need. Moreover, I and other
6 officers will no longer volunteer for high-risk assignments as we have done in the past. In
7 fact, I believe the San Jose Police Department will find it difficult, if not impossible, to
8 find enough officers, not only to fill these crucial roles, but also simply maintain an
9 adequate force to fulfill its public-safety and crime-prevention roles.

10 I declare under penalty of perjury under the laws of the State of California that
11 the foregoing is true and correct and that this declaration is executed this 31 day of
12 May, 2012, SAN JOSE, California.

13
14 
15 Ian Cooley
16
17
18
19
20
21
22
23
24
25
26
27
28